IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 146 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMAN MOTI RATHWA - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Defendant(s)

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Appearance :
MR DF AMIN for Appellant(s) : 1,
MR LR PUJARI AGP for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/12/2006

ORAL JUDGMENT

1. Mr.D.F. Amin, learned counsel for the appellant and Mr. L.R. Pujari, learned Assistant Government Pleader for the respondents State.

2. This Second Appeal, at the instance of unsuccessful

plaintiff, was admitted for hearing the parties on 8/10/1991 on the following substantial question of law;

(i) Whether in the facts and circumstances of the case and in view of the uncontroverted evidence of the plaintiff that he was in possession of the suit land on or before 31/12/1967, the finding of the courts below that he was not in possession is not perverse?

3. The appellant had filed the suit submitting inter-alia that as he was in actual physical and cultivating possession of the land prior to 31/12/1967, he was entitled to settlement of the land in his favour. The plaintiff appeared before the Court and submitted that he was in possession prior to 1967 and in support of his submission, he also produced 9 (nine) receipts (Exhs.19 to 27) which are for the period between 31/7/1970 and 28/1/1976. The trial court, so also the appellate court have held that the plaintiff failed in proving the fact that he was in possession of the property prior to 1967.
4. Mr.Amin, learned counsel for the appellant submits that in absence of any evidence contrary to what was stated by the appellant on oath, the court below ought to have

accepted the statement of the appellant / plaintiff.

5. At the best, the case of the plaintiff would be taken to be ex-parte proceedings. Even in ex-parte suit, the plaintiff is still required to prove his case. The court is not denuded from its jurisdiction to appreciate the evidence and decide on reliability of the statement. In the present case, the two courts below did not rely upon the oral testimony of the plaintiff and have found that the written document i.e. receipts do not strengthen the case of the plaintiff.
6. If the two courts have appreciated the facts in their true perspective, then it cannot be said that the findings recorded by the two courts below are perverse or the plaintiff has proved the fact that he was in possession of the property prior to 1967 and was also entitled to protection under the Government Resolution.
7. There is no force in this appeal. It deserves to and is accordingly dismissed. Interim relief, if any, stands vacated. No costs.

(R.S. GARG, J.)

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